



Written by [Steve Byas](#) on July 26, 2023

Gaetz Seeks to End Unqualified Birthright Citizenship

U.S. Representative Matt Gaetz (R-Fla.) introduced the [“End Birthright Citizenship Fraud Act of 2023”](#) on Tuesday, in an effort to end what he termed “unqualified birthright citizenship.” The legislation seeks to amend the Immigration and Nationality Act to reflect the [14th Amendment’s](#) “subject to the jurisdiction thereof” clause, which Gaetz contended in his statement is widely misinterpreted today.

“Birthright citizenship has been grossly and blatantly misapplied for decades,” [Gaetz said](#), “recently becoming a loophole for illegal aliens to fraudulently abuse our immigration system. My legislation recognizes that American citizenship is a privilege — not an automatic right to be co-opted by illegal aliens.”

He added, “This is an important step in preserving the sanctity of American citizenship and ensures that citizenship is not treated as a loophole to be exploited but rather a privilege to be earned when legally migrating to our country.”

Very little of Gaetz’s statement was used by AOL [in its reporting on the bill](#). Instead, the site spent most of its article arguing that Gaetz is wrong, and contending that birthright citizenship “has become a favored target of hard-line conservatives.” AOL contends that the 1898 Supreme Court case *United States v. Wong Kim Ark* upheld the idea that the 14th Amendment applies to children born on U.S. soil, regardless of their parents’ immigration status.

Not surprisingly, AOL and other media outlets do not accurately report what the Supreme Court actually ruled in the *Wong Kim Ark* case. The decision involved the case of a child born of legal and permanent residents of the United States, not the child of parents in the country illegally. The 14th Amendment does not say that any person born on U.S. soil is automatically a U.S. citizen, but only those who are born to parents who are under the legal “jurisdiction” of the United States.

Certainly, a person who is legally residing in the United States on a permanent basis has placed himself or herself under the jurisdiction of the United States, and therefore any child they have while under that jurisdiction would be a citizen at birth, under the wording of the 14th Amendment.

The 14th Amendment was not enacted to create a new supply of Democratic Party voters, which is the obvious goal of most of those who argue for the interpretation that it makes an automatic citizen of any person who happens to be born on U.S. soil. Rather, its purpose was to clarify the status of former slaves. Congress had enacted the [1866 Civil Rights Act](#) in an attempt to ensure that these former slaves would enjoy full rights of citizenship. But concerned that the Democratic Party might eventually regain control of Congress from the Republican Party and repeal the act, the Republicans who were in the majority in Congress (and wanted the votes of the former slaves) passed the 14th Amendment to place



AP Images
Matt Gaetz



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this provision of the amendment beyond the reach of a simple repeal by a future Democrat-run Congress.

There is some debate as to whether the 14th Amendment was ever properly ratified, but for the sake of argument, let's say that it was. The authors of the amendment were up front with their intent. They explained that this provision of making citizens of the children of former slaves would exclude foreigners who were not under our jurisdiction, including citizens of various Indian tribes. Those individuals were not under the political jurisdiction of the United States, but rather of their tribal governments. In the 1884 Supreme Court case *Elk v. Watkins*, U.S. citizenship was denied to an American Indian because he "owed immediate allegiance" to his tribe — not to the United States. Although he had taken up residence outside his reservation, he was still under the tribe's political jurisdiction, and would have to go through the legal process to become a naturalized citizen.

This is the case that is most applicable to our situation today. A person who has come to the United States from another country, but is not here legally, is still under the jurisdiction of whatever nation he came from.

Senator Lyman Trumbull of Illinois, one of the proponents of the 14th Amendment, explained that "subject to the jurisdiction thereof" meant not owing allegiance to any other nation. In the 1872 *Slaughterhouse* cases, the Supreme Court held that this phrase meant to exclude "children of ministers, consuls, and citizens or subjects of foreign states born within the United States."

That seems to be quite clear to anyone except those who have a political — or some other — motive in arguing that a person born to parents not in our country legally is still, somehow, a citizen at birth. A person might want the 14th Amendment to mean something else, but it does not.

Historically, citizenship in various nations and empires was restricted to citizenship by blood — having a parent who was a citizen, and that remains the case in most countries around the world today. While it is doubtful that Representative Gaetz's bill will pass the Democrat-controlled Senate, regardless of its prospects in the Republican-controlled House of Representatives, it is important to keep this issue alive.

Perhaps the next president could simply issue an executive order to the appropriate agencies of the federal government to recognize the law — the Constitution of the United States — and grant citizenship only to those who earn it through the legal process. That is the purpose of executive orders — orders from the chief executive to *enforce the law as it is*, not to create new law.



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